THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.9060 OF 2006

Dated: 28th April, 2006.

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Between:

Gulf Oil Corporation, Hyderabad,

Rep. by Sr. Dy. Manager (Legal) P.S.Murthy .. Petitioner

And

The Asst. Provident Fund Commissioner (Compliance),

Sub-regional Office, Kukatpally,

Hyderabad. .. Respondent

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.9060 OF 2006

ORDER :

The respondent – Assistant Provident Fund Commissioner, by order dated 28-2-2006 made under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') determined that the petitioner is liable to pay a sum of Rs.1,00,540/- towards PF contribution in respect of the employees engaged on contract. Having received the said order, the petitioner filed an application under Section 7-A(4) of the Act to set aside the order dated 28-2-2006. It is contended by the petitioner that the order dated 28-2-2006 was an ex parte order since the same was passed without affording an opportunity to the petitioner to make its submissions as to its liability under the Act. In the meanwhile, the respondent issued prohibitory order dated 16-3-2006 directing the Bankers of the petitioners to pay a sum of Rs.1,00,540/- standing to the credit of the petitioner. While so, the respondent by order dated 12-4-2006 rejected the petition field by the petitioner under Section 7-A(4) of the Act holding that the determination made under Section 7A of the Act was not an ex parte order . Aggrieved by the same, the present writ petition is filed.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner submits that though

the summons were served on the petitioner and on behalf of the petitioner one Sri K.S. Raju, appeared before the respondent, the order under Section 7-A of the Act was solely based on the report of the Enforcement Officer, without affording any further opportunity to the petitioner to make its submissions. Hence, the said order was an ex parte order and the respondent ought to have considered the same on merits after affording due opportunity to the petitioner instead of rejecting on the ground that it was not an ex parte order.

Under sub-section (4) of Section 7-A of the Act, if the officer is satisfied that the Employer was prevented by any sufficient cause from appearing when the

enquiry was held, is empowered to set aside his earlier order. That apart, admittedly before rejecting the application under sub-section (4) of Section 7-A of the Act, the petitioner was not heard.

In the circumstances, I am of the opinion that the respondent ought to have afforded an opportunity to the petitioner before passing the impugned order dated 12-4-2006. Since no such opportunity was afforded, the impugned order, being in violation of principles of natural justice, cannot be sustained.

Accordingly, without expressing any opinion in the contentions raised by the petitioner, the impugned order dated 12-4-2006 is set aside and the Writ Petition is disposed of with a direction to the respondent to consider the application of the petitioner made under Section 7-A(4) of the Act afresh and pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of two weeks from the date of receipt of this order. It is made clear that in case the petitioner does not cooperate and fails to appear despite notice, it is open to the respondent to pass appropriate orders on merits.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 28-4-2006

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